

**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** ("Settlement Agreement") is entered into and made effective as of the \_\_\_\_\_ day of August 2011 ("Effective Date"), by and between FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for WASHINGTON MUTUAL BANK ("FDIC-R"), ROD HAMMERSLEY/PRESIDIO ("HAMMERSLEY/PRESIDIO"), PRESIDIO APPRAISAL SERVICES, INC. ("PRESIDIO"). The FDIC-R and HAMMERSLEY/PRESIDIO may hereinafter be referred to individually as a "Party" or collectively as the "Parties".

**I. RECITALS**

**1.1** In September of 2004, KASHIFI purchased the two adjoining parcels [redacted] (b)(6) for \$1,250,000. On May 24, 2007, KASHIFI entered into a Purchase & Sale Agreement with [redacted] (b)(6) for [redacted] (b)(6) Property. [redacted] (b)(6) agreed to buy the [redacted] (b)(6) Property for \$1.9 million. [redacted] (b)(6) applied for and obtained two loans from Washington Mutual Bank totaling \$1,709,810. The FDIC-R alleges that HAMMERSLEY/PRESIDIO prepared an appraisal of the [redacted] (b)(6) Property (the "Hammersley Appraisal") to be used by the lender in connection with the mortgage finance transaction. Hammersley alleges that he prepared an appraisal of [redacted] (b)(6) which is reflected in the Hammersley Appraisal.

**1.2** On May 24, 2007, KASHIFI entered into a Purchase & Sale Agreement to sell the [redacted] (b)(6) [redacted] (b)(6) agreed to purchase this unimproved lot for \$870,000. Royal Kirkland prepared an appraisal of the [redacted] (b)(6) Property. The appraisal was submitted to IndyMac Bank FSB as part of the mortgage finance transaction. In reliance on the appraisal and additional information, IndyMac Bank, FSB funded a loan to [redacted] (b)(6) in the amount of \$696,000.

**1.3** No payments were made on the loans. The loans went into default and were foreclosed.

**1.4** On or about April 30, 2010, the FDIC-R filed a lawsuit entitled FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for INDYMAC BANK, F.S.B., and FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for WASHINGTON MUTUAL BANK vs. ROYAL KIRKLAND, an individual; ACCURATE APPRAISAL SERVICES, type of entity unknown; ; DAVID A. KASHIFI, an individual; ROD HAMMERSLEY, an individual; PRESIDIO APPRAISAL SERVICES, INC., a California corporation, and DOES 1 through 15, inclusive, Case No. 10-03286-GAF (PJWx) (hereinafter "Action").

**1.5** The Action alleged that HAMMERSLEY/PRESIDIO breached the contract and made negligent misrepresentations in the Hammersley Appraisal, and that KASHIFI intended to defraud the lenders in connection with the sale of the [redacted] (b)(6) and [redacted] (b)(6) Property.

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**1.6** Hammersley/Presidio dispute and deny the FDIC-R's claims in the Action.

**1.7** The Parties desire and have agreed to settle all claims relating to the Action.

### **2. AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, agree as follows:

**2.1 Recitals.** The Recitals set forth above are incorporated into the body of this Settlement Agreement as though fully set forth herein.

**2.2 Payment to the FDIC-R by Hammersley/Presidio.** Payment of One Hundred Twenty-Five Thousand Dollars and no/cents (\$125,000.00) shall be paid on behalf of Hammersley/Presidio to the FDIC-R. Payment shall be made payable to "Mortgage Recovery Law Group Trust Account."

**2.3** Within 5 business days of the FDIC-R's counsel's receipt of the settlement funds, the FDIC-R shall file a stipulation for dismissal of the Action with prejudice as to Hammersley/Presidio.

**2.4** Upon the FDIC-R's receipt of the settlement payment, the FDIC-R agrees to remove its claim relating to the Hammersley Appraisal from the lawsuit entitled *FDIC as Receiver for Washington Mutual Bank v. LSI, Case No. SACV11-706JST(MLGx)* (the "LSI Lawsuit"). The Parties agree the FDIC-R shall remove its claim in the LSI Lawsuit relating to the Hammersley Appraisal only and the FDIC-R is not prevented from pursuing claims relating to any other appraisals in the LSI Lawsuit or any other matter.

**2.5** The Parties shall bear their own costs and attorneys' fees incurred in the Action.

**2.6** Each Party agrees that Section 664.6 of the Code of Civil Procedure of the State of California shall apply to this Settlement Agreement and requests that the court retain jurisdiction over the Parties to enforce this Settlement Agreement.

### **3. RELEASE**

**3.1 Known and Unknown Claims.** The FDIC-R, Hammersley, Presidio acknowledge and agree that the release they give to each other upon executing this Settlement Agreement applies to all claims for injuries, damages, or losses

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of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which they may have against each other arising from or in conjunction with the Action relating to the [REDACTED] Property, (b)(6) and the Hammersley Appraisal.

3.2 The Parties hereby expressly waive application of *California Civil Code §1542* as it relates to the Action. The Parties certify that they have read and understood the following provisions of *California Civil Code §1542* which states in pertinent part as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

3.3 The Parties understand and acknowledge that the significance and consequence of their waiver of *California Civil Code §1542* is that even if either Party should eventually suffer additional damages arising from or in conjunction with the Action relating to the [REDACTED] Property and the Hammersley Appraisal or any facts or circumstances related to the Action relating to the [REDACTED] (b)(6) [REDACTED] Property and the Hammersley Appraisal, that Party will not be able to make any (b)(6) claim against any other Party for those damages. Furthermore, each Party acknowledges that they consciously intend these consequences even as to claims for damages that may exist as of the date of this release relating to the Action, but which that Party does not know exists, and which, if known, would materially affect that Party's decision to execute this release, regardless of whether that Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

3.4 Except for the rights, duties, and obligations set forth in this Settlement Agreement, the Parties each hereby fully, finally, and forever release and discharge the other Parties, and any and all of its respective, employees, brokers, investors, members, partners, joint venturers, independent contractors, attorneys, accountants, insurers, agents, investors, representatives, officers, directors, and any corporation, partnership or limited liability company which was or is at any time the parent or wholly owned subsidiary of such entity, and any such corporation's, partnership's or limited liability company's officers, directors, employees and/or agents, or any corporation, partnership or limited liability company which was or is an affiliate of such entity by virtue of common ownership or control, and any such corporation's, partnership's or limited liability company's, officers, directors, employees and/or agents of and from any and all actions, causes of action, claims, demands, damages, debts, losses, costs, expenses, attorney fees or other liabilities of every kind and nature whatsoever, whether legal or equitable and whether known or unknown, arising out of, resulting from, or relating to, in any manner,

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(b)(6) \_\_\_\_\_ to any damages, loss, or liability arising from or in conjunction with the Action relating to the \_\_\_\_\_ Property, and the Hammersley Appraisal.

**3.5** Notwithstanding any other provision of this Settlement Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed any claims against HAMMERSLEY/PRESIDIO arising out of any other transactions or appraisals (other than set forth in the Action) and arising out of any other existing or failed financial institutions other than WASHINGTON MUTUAL BANK, FA.

**3.6** Notwithstanding any other provision, by this Settlement Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if the Settlement Agreement had not been executed, any action taken by any other federal agency. In addition, this Settlement Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office in any federal judicial district. In addition, the FDIC-R specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

## **4. MISCELLANEOUS**

**4.1 Conditions of Execution.** Each Party acknowledges and warrants that its execution of this Settlement Agreement is free and voluntary.

**4.2 No Admission.** It is agreed that no Party hereto admits liability or wrongdoing of any nature, and that this Settlement Agreement is made as a compromise of disputed claims.

**4.3 Fair Meaning.** The Parties hereto further agree that the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

**4.4 Governing Law.** The Parties agree to submit to the Courts of the City and County of Los Angeles, California, for any dispute arising out of this Settlement Agreement, or related thereto, and consent to the jurisdiction of said Courts and further agree that any and all matters of dispute shall be adjudicated, governed and controlled under California law.

**4.5 Attorneys Fees and Costs.** Should any action be commenced to enforce, interpret, or seek damages, injunctive relief, or specific performance for violation of this Settlement Agreement, the prevailing party shall, in addition to any other available relief,

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be entitled to an award of reasonable attorney's fees and litigation expenses incurred in the prosecution or defense of the action, including any appeal.

**4.6 Severability.** The Parties hereto agree that if any provision of this Settlement Agreement is declared by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and such illegal or invalid part, term or provision shall be deemed not to be part of this Settlement Agreement.

**4.7 Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

**4.8 Review and Understanding.** The Parties have entered into this Settlement Agreement voluntarily, having fully read and fully understood the meaning and effect of all of its terms and provisions, and fully understanding its and their costs and risks. Each of the Parties has consulted with legal counsel concerning this Settlement Agreement and has conducted such inquiry as they deem necessary and advisable prior to entering into this Settlement Agreement. The Parties enter into this Settlement Agreement understanding that facts or other circumstances may exist which are presently unknown or undisclosed, or which are different from or other than those which they believe to be the case, and the Parties voluntarily assume all risks attendant to such unknown, undisclosed, different, or additional facts or other circumstances.

**4.9 Number.** Whenever applicable, the singular shall include the plural, and the plural shall include the singular.

**4.10 Counterparts/Execution.** This Settlement Agreement may be executed in one or more counterparts, all of which shall form a single agreement. A Party's signature on this Settlement Agreement by facsimile or e-mail shall be valid and effective for all purposes as an original signature, provided, however, that the original signature shall be produced upon request.

**4.11 Waiver.** No term or condition of this Settlement Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Settlement Agreement, except by written instruments signed by the Party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

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**4.12 Headings.** The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

**4.13 Subsequent Agreements.** The Parties agree that, upon the reasonable request of the other Party, they shall execute, acknowledge, and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Settlement Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, that may affect the rights of the Parties as between themselves or others with respect to their rights and obligations created by this Settlement Agreement.

**4.14 Entire Agreement.** The Parties hereto further agree and promise that this Settlement Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior negotiations, agreements or understandings made between or among the Parties. This Settlement Agreement shall not be modified except in a writing signed by the Parties or their authorized representatives.

**IN WITNESS WHEREOF,** and intending to be legally bound hereby, the Parties have executed this Settlement Agreement as of the date set forth in the opening paragraph of this Settlement Agreement.

DATED: November 20, 2011  
APPROVED AS TO FORM

KEENEY WAITE & STEVENS

(b)(6)

By

[Redacted Signature]

Mary M. Best  
Todd F. Stevens

Attorneys for Defendants,  
ROD HAMMERSLEY/PRESIDIO and  
PRESIDIO APPRAISAL SERVICES, INC.

DATED: November 23, 2011

PRESIDIO APPRAISAL SERVICES, INC.

By:

[Redacted Signature]

(b)(6)

ROD HAMMERSLEY/PRESIDIO

*MANAGER*

Title

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DATED: November 28, 2011

ROD HAMMERSLEY

By:

[Redacted Signature]

(b)(6)

ROD HAMMERSLEY

DATED: November 29, 2011  
APPROVED AS TO FORM

ANDERSON, McPHARLIN & CONNERS LLP

By:

[Redacted Signature]

VANESSA H. WIDENER

Attorneys for Plaintiffs,

FEDERAL DEPOSIT INSURANCE CORPORATION  
as Receiver for WASHINGTON MUTUAL BANK

DATED: November 18, 2011

FEDERAL DEPOSIT INSURANCE CORPORATION  
as Receiver for WASHINGTON MUTUAL BANK

By:

[Redacted Signature]

(b)(6)

Signature

Richard S. Gills, Counsel

Type/Print Name and Title